Supreme Court, U.S.
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No. 01-1120

IN THE

Supreme Court of the United States

DAVID MEYER, individually and in his capacity as president and designated officer/broker of Triad, Inc., dba Triad Realtors,

Petitioner,

v.

EMMA MARY ELLEN HOLLEY; DAVID HOLLEY; MICHAEL HOLLEY, a minor; BROOKS BAUER, individually and on behalf of the general public,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF *AMICUS CURIAE* OF THE INTERNATIONAL ASSOCIATION OF OFFICIAL HUMAN RIGHTS AGENCIES IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICUS CURIAE*[1]

Founded in 1949, the International Association of Official Human Rights Agencies ("IAOHRA") is a non-profit membership organization with its headquarters in Washington, D.C. IAOHRA's membership presently consists of approximately 160 human rights agencies in the United States and Canada. Most of IAOHRA's members are statutorily created bodies with authority for enforcing human rights and civil rights laws in their jurisdictions. IAOHRA seeks to foster human and intergroup relations, enhance human rights practices under law, and promote civil and human rights around the world. As part of its mission, it has led efforts to develop and enforce local, state, and national human and civil rights statutes.

IAOHRA is committed to the vigorous enforcement of the Fair Housing Act of 1968, 42 U.S.C. § 3601 *et seq*. ("FHA" or "the Act"). As an association whose membership includes many local and state human rights agencies, IAOHRA is uniquely positioned to speak to the interaction between state and federal fair housing laws, and between state regulation of real estate brokers and those brokers' liability for violations of federal fair housing laws, both of which are important issues in this case.

Indeed, the United States Department of Housing and Urban Development ("HUD" or "the Department"), the federal agency responsible for enforcing the FHA, has determined that the fair housing laws for many states and localities, and the

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1/ The parties have consented to the submission of this brief. Their letters of consent have been lodged with the Clerk of this Court. None of the parties authored this brief in whole or in part and no one other than *amicus curiae* or its counsel contributed money or services to the preparation or submission of this brief.

administrative enforcement of these laws by the relevant state and local enforcement agencies, provide substantive rights and remedies for alleged discriminatory housing practices that are "substantially equivalent to those provided by the Fair Housing Act." 61 Fed. Reg. 53380, 53380-81 (Oct. 11, 1996); *see also* Robert G. Schwemm, *Housing Discrimination Law and Litigation*, App. C (2002) (identifying states and localities with fair housing laws that are "substantially equivalent" to the Fair Housing Act).

Moreover, when the Department receives complaints of violations of a state or local fair housing law that has been certified as substantially equivalent to the Act, it refers the complaint to the appropriate state or local agency. 24 C.F.R. § 115.204(a). Thus, state and local authorities, many of whom are IAOHRA's members, work hand-in-hand with HUD to enforce the Fair Housing Act and substantially equivalent statutes and ordinances to further the overarching goal of fair housing for all Americans. *Cf.* 65 Fed. Reg. 23432, 25434 (May 1, 2000) ("Oftentimes, the work of enforcing the provisions of the Federal Fair Housing Act and the substantially equivalent fair housing laws of States and local governments, requires crossing governmental (State/local/Federal) lines. It can require that public and/or private agencies work with the Federal government to complete a specific task.").

IAOHRA therefore files this brief in support of Respondents, urging affirmance of the decision below.

SUMMARY OF ARGUMENT

While we agree with Respondents and other *amici curiae* urging affirmance that established principles of vicarious liability support holding Petitioner liable for the discriminatory

acts of his agent Crank, we focus primarily upon a separate and independent basis for affirming the decision of the Ninth Circuit: as the designated broker-officer of an incorporated real estate firm, Petitioner had an affirmative duty reasonably to supervise the activities of his salespersons, including securing their compliance with the Fair Housing Act, and if he breached that duty, he is directly liable for violating the FHA.

The FHA's stated policy is "to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601. In keeping with this mandate, the Act does not limit the universe of defendants who can be liable for discriminatory actions, and this Court has observed both that "the language of the Act is broad and inclusive," *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209 (1972), and that its complaint-filing provisions should be accorded a "generous construction," *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731 (1995). Moreover, as the Ninth Circuit recognized, HUD regulations historically have included within the FHA's purview "any person who directs or controls, *or has the right to direct or control, the conduct of another person* with respect to any aspect of the sale . . . of dwellings or the provision of brokerage services relating to the sale . . . of dwellings, if that other person, acting within the scope of his or her authority as the employee or agent of the controlling or directing person, is engaged, has engaged, or is about to engage, in a discriminatory housing practice." 24 C.F.R. § 103.20 (1999) (emphasis added) (cited at JA 5). It follows that an individual who has a *duty* to control the conduct of another person also can be held liable under the Act for failing to take strong measures to prevent discrimination by that person. Indeed, the Act's ambitious goal of eradicating housing discrimination in this country would be impossible to achieve if those with a statutory duty to require

compliance with the Act could evade liability by consciously avoiding the exercise of their authority. Therefore, as it did in *Edmonds*, this Court should read the Act in such a way as to "preserve the primary operation of the policy" of the FHA. *Edmonds*, 514 U.S. at 732 (internal quotation marks and brackets omitted).

Petitioner and his supporting *amici* maintain that the Ninth Circuit's decision represents a wholesale departure from established principles of corporate law and deals a catastrophic blow to the real estate industry as we know it. Pet. Br. 10, 32; National Association of Homebuilders ("NAHB") Br. 4-5, 13; National Association of Realtors ("NAR") Br. 3, 18-19; California Association of Realtors ("CAR") Br. 14. According to Petitioner, the decision below "has, without exaggeration, opened the floodgates of litigation throughout the country." Pet. Br. 32. The burden of personal liability is so great, Petitioner claims, that no "sane individual" will assume it, and the nation's real estate corporations will perish. *Id.* Petitioner's supporting *amici* raise similar arguments. CAR Br. 13-16; NAHB Br. 12-15.

But as evocative as this rhetoric might be, it has very little to do with the case at hand. The Ninth Circuit properly reversed summary judgment and held that Petitioner is potentially liable, not solely as the owner or officer of a real estate corporation, but as its designated broker-officer. Under California law and the law of many other states, a real estate corporation's designated broker-officer is a licensed professional with an ongoing duty of supervision. Cal. Bus. & Prof. Code § 10159 ("Each officer of a corporation through whom it is licensed to act as a real estate broker is, while so employed under such license, a licensed real estate broker . . . ."); *id.* § 10159.2 (providing that designated broker-

officer "shall be responsible for the supervision and control of the activities conducted on behalf of the corporation"); *see also infra* note 6 (citing other state statutes). Recognizing that obligation, the Ninth Circuit reversed the district court's decision that Petitioner could not be liable as a matter of law. JA 71.

Thus, this is not a case in which an innocent corporate shareholder or officer is facing personal liability for the wrongdoing of employees in a remote branch of a vast corporation. And the decision below does not suggest that such a shareholder or officer ever would be held liable. Established principles of limited liability, which the decision below does not disturb, likely would bar personal liability in such a case. Nor is Petitioner facing strict liability as a designated broker-officer; it remains entirely possible for him to establish that he has met his various duties, or that Crank acted outside the scope of his employment. Accordingly, the challenged decision leaves established corporate law principles – and the American real estate industry – entirely intact.

ARGUMENT

I. PETITIONER HAD AN AFFIRMATIVE DUTY TO SUPERVISE CRANK'S COMPLIANCE WITH THE FHA.

The Ninth Circuit correctly reversed the district court's holding that Petitioner could not be liable under the Fair Housing Act for the discriminatory acts of a salesperson employed by the corporation of which he was the designated broker-officer. The Act places no limit on the class of potential defendants. Rather, it provides that "[i]t shall be unlawful" to engage in certain discriminatory conduct, 42 U.S.C. §§ 3604,

3606, 3617, and, more specifically, that "[i]t shall be unlawful for *any person* or entity whose business includes engaging in real estate-related transactions to discriminate," *id.* § 3605. Petitioner does not contest that he is a "person . . . whose business includes engaging in real estate-related transactions," but he argues that the Act should not be read to apply to him because such an interpretation would run afoul of established corporate law principles limiting officer and shareholder liability for the acts of the corporation's agents.

But, in fact, the decision below comports fully with corporate law. First, as argued by Respondents and other *amici* in support of affirmance, the FHA imposes *respondeat superior* liability upon Petitioner, as designated broker officer, broker-officer president, and sole shareholder of a small, closely-held brokerage, under traditional principles of agency law. Second, even if Petitioner were not vicariously liable for the actions of the corporation's salespersons, liability could arise from his violation of the duties placed upon him as the corporation's designated broker-officer under California law.

As *amici* supporting Petitioner correctly observe, real estate brokers work in a very highly regulated industry: every jurisdiction in the country requires real estate brokers to hold state-issued licenses. NAR Br. 10; CAR Br. 1. And while licensing requirements vary from state to state, most states impose significant and ongoing responsibilities on licensees. Patrick J. Rohan *et al.*, *Real Estate Brokerage Law and Practice* § 6.02-6.04, at 6-5 to 6-20 (2001) (describing activities subject to regulation and continuing education requirements). The overriding purpose of real estate regulation, as the model regulations promulgated by the National Association of Real Estate Law and Licensing Offices make clear, is to "protect the public health, safety and welfare." *Id.*

§ 6.06, at 6-29. The Fair Housing Act is one of the critical expressions of this public interest, and most states, including California, have reinforced their commitment to fair housing with legislation that is substantially equivalent to the FHA. Cal. Gov. Code § 12955; 61 Fed. Reg. at 53381; *see also* Robert G. Schwemm, *supra*, § 30:1, at 30-1 ("Most states and many localities have some form of fair housing law.").

A key feature of most jurisdictions' real estate regulations, and the one that lies behind the efforts of Petitioner and his *amici* to characterize this case as a straightforward matter of corporate law, is the possibility of entity licensing. Most states allow business entities to hold real estate brokers' licenses, and a small but significant proportion of brokers' licenses are held by corporations.[2] Certainly, the corporate structure offers many advantages for individual real estate brokers: they are particularly useful in facilitating the payment of commissions, Rohan, *supra*, § 4.05[6], at 4-52 to 4-53, and traditional principles of limited liability shield shareholders and, in some cases, officers from many forms of personal liability.

But, as with professional regulation of lawyers, doctors, and accountants, licensing regimes recognize that many of the responsibilities of real estate brokers must rest with an individual. *Real Estate Corporate Licenses*, Bill No. AB 985,

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2/ According to the California Association of Realtors, 14% of brokers' licenses in California are held by corporations. CAR Br. 6. Most of these corporations, again according to the Association's figures, seem to be very small firms: there is an average of 1.13 designated broker-officers per corporate license in California, and an average of 5.5 salespersons for each designated broker-officer. *Id.*; *see also* Rohan, *supra*, § 2.01[3][a], at 2-11 ("The residential real estate brokerage industry traditionally has been dominated, in terms of numbers of firms and volume of sales, by small brokerage firms.").

Hearings Before the Assembly Committee on Labor, Employment and Consumer Affairs (Cal. Apr. 24, 1979) ("The licensing of corporate 'persons' has always been problematic: the state is confronted with the dilemma of guaranteeing the professional competence and proficiency of a legal fiction. Traditionally, the problem has been solved by requiring the direct supervisory control of the corporation's professional actions by a licensed individual who is himself qualified."). Thus, even though a corporation might be the nominal licensee, a qualified individual within the corporation must be designated, and in some cases independently licensed, as the corporation's broker-officer. Rohan, *supra*, § 6.03[7], at 6-16. This designated broker-officer assumes responsibility for the corporation's compliance with the legal obligations imposed upon it by the relevant licensing regime.[3]

California follows this general practice, requiring an incorporated real estate firm to appoint an individual to serve as its designated broker-officer. Cal. Bus. & Prof. Code §§ 10211, 10159. Further, California law provides that

> The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

3/ For details of state licensing regimes, see Rohan, *supra*, § 6.07.

Cal. Bus. & Prof. Code § 10159.2. The corporation may "assign supervisory responsibility over salespersons licensed to the corporation" to other licensed broker-officers of the corporation, but only by resolution of the corporation's board of directors.[4]

The broker-officer is not excused from the professional responsibilities California imposes upon brokers who hold licenses as individuals by virtue of his affiliation with the corporation. Indeed, it is only through the designated broker-officer that any corporation can become eligible to hold a brokers' license at all.[5] Furthermore, Section 10159 of the

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4/ Thus, the California Association of Realtors's suggestion that one individual cannot supervise all the salespersons in a particular firm, especially in "corporate giants that may hire thousands of agents nationwide," CAR Br. 12-13, has no force. All unlicensed individuals must be supervised by a licensed broker, and Section 10159.2(b) provides a mechanism for effecting such supervision, even in a large organization:

> A corporate broker licensee that has procured additional licenses in accordance with Section 10158 through officers other than the officer designated pursuant to Section 10211 may, by appropriate resolution of its board of directors, assign supervisory responsibility over salespersons licensed to the corporation to its broker-officers.

Cal. Bus. & Prof. Code § 10159.2(b).

5/ Section 10211 of the California Business and Professions Code provides:

> If the licensee is a corporation, the license issued to it entitles one officer thereof, on behalf of the corporation, to engage in the business of real estate broker without the payment of any further fee, such officer to be designated in the application of the corporation for a license. For

California Business and Professional Code explicitly provides that "[e]ach officer of a corporation through whom it is licensed to act as a real estate broker *is, while so employed under such license, a licensed real estate broker*, but licensed only to act as such for and on behalf of the corporation as officer." Cal. Bus. & Prof. Code § 10159 (emphasis added).

Petitioner's undisputed status as Triad's designated broker-officer gave rise to a duty to supervise the salespersons of the corporation. California real estate law makes clear that a designated broker-officer who violates his affirmative duty to supervise the activities of the corporation's salespersons is engaging in misconduct. Specifically, a designated broker-officer who fails to fulfill his affirmative duty to supervise the activities of the corporation's salespersons engages in "willful" disregard of the Real Estate Law in violation of Business and Professions Code § 10177(d), which is grounds for suspension or revocation of his license. *Nelson v. Dep't of Real Estate*,

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> each officer other than the officer so designated, through whom it engages in the business of real estate broker, the appropriate original or renewal fee is to be paid in addition to the fee paid by the corporation.

Cal. Bus. & Prof. Code § 10211.

Section 10158 provides:

> When a real estate license is issued to a corporation, if it desires any of its officers other than the officer designated by it pursuant to Section 10211 to act under its license as a real estate broker, it shall procure an additional license to so employ each of such additional officers.

Cal. Bus. & Prof. Code § 10158.

161 Cal. App. 3d 939, 941-42 & n.3 (1984). California law provides that a broker's license may be suspended or revoked "[i]f, as a broker licensee, [he] failed to exercise reasonable supervision over the activities of his salespersons; or, as the officer designated by a corporate broker licensee, [he] failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required." Cal. Bus. & Prof. Code § 10177(h); *see also id.* § 10159.2(a) (requiring designated broker-officer to supervise "salespersons licensed to the corporation in the performance of acts for which a real estate license is required").[6]

This duty of supervision plainly encompasses an obligation to prevent housing discrimination. California's regulatory regime evinces a clear commitment to state and federal fair housing laws. California law itself makes it unlawful "[f]or any person or other organization or entity whose business involves real estate-related transactions to discriminate against any person in making available a transaction, or in the terms and conditions of a transaction, because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry,

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6/ California is far from alone in requiring the designated broker-officer of a real estate corporation to supervise sales agents. Such supervision requirements are extremely common. *E.g.*, Ala. Code § 34-27-34; Alaska Admin. Code tit. 12, § 64.125; Ariz. Rev. Stat. Ann. § 32-2153(A)(21); Colo. Rev. Stat. § 12-61-103(7)(a); Ga. Code Ann. § 43-40-18(c); Idaho Code § 54-2038; Kan. Stat. Ann. § 58-3060(b); Ky. Rev. Stat. Ann. § 324.160(6); Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(27); Me. Rev. Stat. Ann. tit. 32, § 13067(I)(3); N.H. Rev. Stat. Ann. § 331-A:16(I), (II); N.C. Stat. Ann. § 93A-2(a)-(b); Ohio Admin. Code § 1301:5-1-14; Okla. Stat. tit. 59, § 858-310; Or. Rev. Stat. § 696.301(29); 49 Pa. Code § 35.244; R.I. Code R. 02 040 012, Rule 4; S.C. Code Ann. § 40-57-135; S.D. Codified Laws § 36-46.1(3); Utah Code Ann. § 61-2-11(14); 18 Va. Admin. Code § 135-20-160; Wash. Admin. Code § 308-124D-061; Wyo. Stat. Ann. § 33-28-111(a)(ix).

source of income, familial status, or disability." Cal. Gov. Code § 12955.

Moreover, the California Code of Regulation requires brokers to secure the compliance of their salespersons. "A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes . . . the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage . . . [f]amiliarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination." Cal. Admin. Code tit. 10, § 2725(f). Thus, the broker-officer has an affirmative legal duty to establish rigorous procedures and policies requiring her salespersons to comply with the Fair Housing Act. Unlike ordinary corporate officers, designated broker-officers are in a position of unique professional responsibility when it comes to anti-discrimination laws.

The Ninth Circuit's decision is fully consistent with that responsibility. The court of appeals explicitly relied on Petitioner's status as Triad's designated broker-officer as a basis for liability. JA 67-71. Specifically, it noted that under California law, a designated broker-officer of a real estate corporation is "responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees in the performance of acts for which a real estate license is required." JA 67. If Petitioner breached that duty of supervision, the Ninth Circuit concluded, "then he should be held accountable for such an omission even absent direct involvement or authorization of Crank's alleged discriminatory conduct." JA 70. Although the Ninth Circuit reasoned that these duties placed Petitioner "squarely within [the Department of Housing and Urban Development's] regulatory history allowing complaints against any person who

has the right to direct or control the conduct of another in any aspect of the sale of or provision of brokerage services to the sale of a dwelling," JA 69, the viability of that regulation is not necessary for liability. The Fair Housing Act places no limitation on the class of potential defendants; it reaches *"any person* or entity whose business includes engaging in real estate-related transactions." 42 U.S.C. § 3606 (emphasis added). Petitioner argues that the plain language of the Act should be constrained by the limited liability principles of corporate law. But even if limited liability principles would shield "innocent" officers and shareholders, Petitioner still is potentially liable as the designated broker with a duty to supervise the Triad salespersons' compliance with the FHA.

II. HOLDING DESIGNATED BROKERS LIABLE FOR FAILING REASONABLY TO SUPERVISE IS NECESSARY FOR EFFECTIVE ENFORCEMENT OF THE FHA.

There are solid policy reasons for holding broker-officers responsible for the acts of the corporation's sales agents. It is plain both that sales agents should be properly supervised and that a corporation cannot itself engage in such supervision, but must act through an individual.[7] The designated broker-officer

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7/ As aptly stated in the legislative history of Sections 10177 and 10159:

> Under the terms of the law, real estate brokers are responsible for supervising the activities of their salespersons and employees. The corporate licensee, as a broker, has a similar responsibility, which it cannot fulfill. A paper entity cannot supervise . . . . The granting of the corporate license is predicated upon the qualifications of the designated officer in the first place. It is no injustice to demand that the person standing for

is the person required by many state laws to fulfill that obligation. *Supra*, note 6. As a licensed professional, a real estate broker has unique knowledge and training, and as the individual whose professional status makes the licensing of the corporation possible, he is in a special position of authority. Cal. Bus. & Prof. Code § 10153.2 (requiring brokers to have completed courses in real estate practice, law, financing, appraisal, and accounting); *id.* § 10211 (providing that real estate corporation must name a designated broker-officer); *id.* § 10159.2 (placing responsibility of supervising corporation's employees on designated broker-officer).

Moreover, the possibility of liability for failure properly to supervise sales agents provides the broker-officer with a personal financial incentive to meet his supervision obligations. In the absence of such an incentive, a designated broker-officer could evade the requirements of the Fair Housing Act by neglecting adequately to supervise his sales agents. A suit for damages brought by the victims of housing discrimination would reach the corporation and the sales agent, but might leave untouched the one individual with both the ability and the duty to prevent the discrimination: the designated broker-officer. The California Real Estate Law "attempts to insure licensed supervision of real estate corporation activity by holding designated officers personally responsible for [salesperson] supervision. In this way, holders of brokers licenses will be discouraged from lending their names to arrangements in which they will play the role of 'absentee' designated broker." Senate Comm. on Business & Professions,

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the corporation at licensing continue to stand for the corporation. That is an implicit assumption of the law anyway.

Real Estate Corporate Licenses, supra.

Staff Analysis of AB 985 (Hannigan) as Amended May 3, 1979, at 2 (July 11, 1979).

In addition, the duty properly to supervise agents working under the corporate license, and the potential liability for failing to do so, is an obligation incurred in return for the privilege of conducting business as a corporation. As Petitioner and his *amici* recognize, incorporating a real estate business as a corporation offers innumerable benefits. Pet. Br. 32; NAR Br. 13; CAR Br. 14-15. But California law requires, as a price of using the corporate form, that a real estate corporation designate an individual as the broker-officer and that that individual accept responsibility for supervising other agents of the corporation. Cal. Bus. & Prof. Code §§ 10211, 10159.2(a). Potential liability for lapses in supervision is the price for the privilege of using the corporate form. *Cf. Real Estate Corporate Licenses, supra* (noting that state's grant of corporate licenses is predicated on oversight of corporation's activities by licensed professional individual). Petitioner's position would permit a broker to shield himself from Fair Housing Act liability and any meaningful duty to supervise salespersons working under his license by operating as a corporation. This would have perverse consequences under most state real estate laws in that the corporate form would shield the designated broker from FHA liability but no other type of liability for negligent supervision. Given the expression of public interest in securing fair housing as embodied in the Fair Housing Act and the substantially equivalent laws of numerous states, this should not be the law.

III. THE NINTH CIRCUIT DECISION LEAVES TRADITIONAL PRINCIPLES OF LIMITED LIABILITY INTACT.

The decision below will not result in the parade of horribles – a flood of litigation, the imposition of strict liability on innocent officers and shareholders, the demise of the corporate form in the real estate industry – that Petitioner and his supporting *amici* describe. As an initial matter, it is not unusual for a licensing agency to punish both a real estate corporation and its designated broker-officer for the corporation's wrongdoing. Thus, in discussing entity licensing, a well-known commentator has noted:

> A more genuine concern is the personal liability of the designated broker. For instance, it is often thought that if an individual (Jane Jones) incorporates herself as Jane Jones, Inc., it may shield her from personal liability for torts and contracts of the brokerage corporation. The more logical theory seems to be that if the corporation condones the conduct, the licensing agency will attempt to pursue both licensees rather than let a broker hide behind a corporate veil for breach of fiduciary duty . . . .

Rohan, *supra*, § 6.03[7], at 6-17; *see also id.* § 9.04[3], at 9-31 ("[R]eal estate brokers should exercise caution regarding the actions of their subordinates because under the Fair Housing Act a corporation *and its officers* are responsible for the acts of a subordinate employee, *even if the acts were neither directed*

nor authorized.") (emphasis added).[8] Thus, subjecting a broker-officer to personal liability where he has violated a statutory duty to supervise a sales agent who engages in discrimination is hardly a break with prior practice.

Moreover, the Ninth Circuit did not shred the corporate veil. The court held that a designated broker-officer could be liable for his own failure reasonably to supervise his corporation's sales agents. JA 71. Rather than imposing strict liability, the decision below corrects the district court's grant of absolute immunity – immunity that renders the professional responsibilities of designated broker-officers entirely without substance.

Understood as a matter of professional responsibility, the decision below in no way creates so broad a class of defendants as Petitioner claims. Petitioner was the sole shareholder, president, and designated broker-officer of Triad, a small real estate brokerage firm. But rather than discuss why an

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8/ Moreover, a number of states hold broker-officers responsible for acts of the corporation or sales agents. *E.g.*, Ala. Code § 34-27-34 ("A qualifying broker shall be held responsible to the commission and to the public for all acts governed by this chapter of each salesperson and associate broker licensed under him or her and of each company for which he or she is the qualifying broker."); 49 Pa. Code § 35.201 (providing that the "broker of record" of a corporation is "[t]he individual broker responsible for the real estate transactions of a . . . corporation"); *Kimball Bridge Road at Big Creek v. Everest Realty Corp.*, 234 S.E.2d 673, 675-76 (Ga. Ct. App. 1977) (concluding complaint was sufficient to state a claim against the defendant individually where he admitted to being the qualifying broker for the defendant realty corporation and in charge of the office, even though he claimed that he had no involvement in the transaction at issue); *Circle T Corp. v. Deerfield*, 444 P.2d 404, 407-08 (Colo. 1968) (holding designated broker of Colorado corporation personally liable for corporation's breach of fiduciary duty).

individual in Petitioner's position of authority should be allowed to divest himself of his professional responsibilities, Petitioner and his supporting *amici* invoke a range of hypothetical defendants as the reason why the decision below cannot be sustained. For example, the National Association of Home Builders contends that the decision below will discourage small investors from placing their funds in Real Estate Investment Trusts for fear that they will be held vicariously liable for the wrongful acts of others. NAHB Br. 12.

In fact, the Ninth Circuit's decision does *not* suggest that every officer or shareholder in a real estate corporation is liable for the actions of a rogue sales agent. Rather, it reaffirms the unremarkable proposition that a real estate corporation's designated broker-officer is liable for violations of the Fair Housing Act committed by the corporation's sales agent where the broker's statutory duty of supervision makes him the principal of the agent or where he fails adequately to supervise that agent. The challenged decision makes liable only those whose responsibility it is to ensure compliance with the FHA.

As sole shareholder, president, and particularly as designated broker-officer of Triad, Petitioner was the person within the corporation on whom regulatory responsibility rested. As a professional charged with the oversight of his subordinates' compliance with the Fair Housing Act, Petitioner could no more turn that duty over to those very subordinates than could an attorney delegate her ethical responsibilities to her staff. Because of the professional responsibilities that being the designated broker-officer carries, liability does not attach simply because Petitioner *might* or *could* have exercised some supervision over the primary offender in this case; rather, as the designated broker he *must* oversee compliance with the FHA.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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